

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

HARVEY L. FAIRLEY,

Plaintiff,

v.

AMY WESTCOMB,

Defendant.

CASE NO. 2:19-cv-46

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Vermaat's Report and Recommendation in this matter (ECF No. 28), Plaintiff's Objections (ECF No. 29), and Defendant's Response (ECF No. 30). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; Plaintiff's Objections; and Defendant's Response. The Court

finds the Magistrate Judge's Report and Recommendation, which recommends granting the defense motion for summary judgment and declining to exercise supplemental jurisdiction over Plaintiff's state law claims, factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. Plaintiff's objections do not address the Report and Recommendation in any persuasive way. The objections primarily reiterate Plaintiff's factual allegations and amplify arguments Plaintiff has already made and the Magistrate Judge properly addressed. To the extent Plaintiff asserts that the Magistrate Judge applied incorrect legal standards, he is simply mistaken. Nothing in Plaintiff's objections changes the core analysis in this case. Summary judgment in favor of Defendant Westcomb regarding Plaintiff's Eighth Amendment claim is appropriate, for the very reasons the Report and Recommendation details. The Court in its discretion declines to exercise supplemental jurisdiction over Plaintiff's state law claims. 28 U.S.C. § 1367(c)(3).

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 28) is **APPROVED AND ADOPTED** as the opinion of the Court.
2. Defendant Westcomb's Motion for Summary Judgment (ECF No. 24) is **GRANTED**.
3. Plaintiff's state law claims are **DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. § 1367(c)(3).
4. For the same reasons that the Court dismisses Plaintiff's claims, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v.*

Wigglesworth, 114 F.3d 601, 611 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)).

Dated: August 13, 2020

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE